

A Tan Boon Wah v Datuk Seri Ahmad Said Hamdan, Ketua Suruhanjaya, Suruhanjaya Pencegah Rasuah Malaysia & Ors

B HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS
NO R3–24–42 OF 2009
MOHAMAD ARIFF J
19 NOVEMBER 2009

C *Constitutional Law — Fundamental liberties — Interpretation and construction of — Rights-oriented interpretation approach — Presumption against violation of personal liberties — Ambiguities to be resolved in support of fundamental liberties*

D *Criminal Law — Malaysian Anti-Corruption Commission Act 2009 — Investigation of witness — Witness held and interrogated at Malaysian Anti-Corruption Commission beyond normal office hours — Whether statement of witness could only be recorded during normal office hours — Whether damages for false imprisonment ought to be allowed*

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F *Statutory Interpretation — Construction of statutes — Fundamental liberties — Statutory provisions affecting fundamental liberties — Rights-oriented interpretation approach — Presumption against violation of personal liberties — Whether ambiguities to be resolved in support of fundamental liberties*

G *Words and Phrases — ‘day-to-day’, meaning of — Whether connotes power or ability to conduct investigation round-the-clock — Malaysian Anti-Corruption Commission Act 2009 s 30(3)(a)*

H On 15 July 2009 officers of the Malaysian Anti-Corruption Commission (‘MACC’) conducted a search at the plaintiff’s home, as a result of which the plaintiff was required to attend at the MACC Headquarters Shah Alam to assist in an investigation as a witness. According to the plaintiff, he was required to attend at that headquarters at 8.45pm and was questioned thereafter by MACC’s officers and was only released at 1.35pm the following day. The defendants claimed that the plaintiff was only interrogated from 9.45pm until 2.53am the next day and was allowed to leave the premises at 2.50am. The defendants further claimed that the plaintiff chose to remain until the morning of 16 July 2009 to wait for his wife who allegedly was to

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bring some relevant documents with her. The statement taking continued at 11.30 in the morning of 16 July 2009 until 1.30pm. The plaintiff did not contradict the defendants' claims. The plaintiff in this suit prayed, *inter alia*: (i) for a declaration that the defendants, in investigating an offence under s 30(1)(a) of the Malaysian Anti-Corruption Commission Act 2009 ('the Act') could lawfully only record a statement of the plaintiff as a witness during office hours, namely 8.30am to 5.30pm each day and not beyond these hours; (ii) a declaration that the defendants had contravened s 30(3)(a) of the Act; and (iii) damages. The issue before the court was whether it was permissible for the plaintiff to have his statement recorded as a witness outside of MACC's normal office hours.

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Held, allowing the plaintiffs' application and granting damages for false imprisonment:

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- (1) As a matter of principle, a statutory provision affecting fundamental liberties must be read broadly in the light of the relevant constitutional provisions. There is less room for literalism, but greater scope for a rights-oriented approach to interpretation. This has to be, since it cannot be the presumed intention of Parliament to enact a law that violates personal liberties. In any mature constitutional system, if there is any ambiguity in the law, that ambiguity should be resolved in support of fundamental liberties, rather than the contrary (see para 21).
- (2) The phrase 'day-to-day' in s 30(3)(a) of the Act raised an ambiguity. The court had to interpret that phrase so as to avoid an absurd result. In the context of s 30(3)(a) of the Act, 'on a daily basis', is the proper meaning to be ascribed to that phrase. It cannot mean or connote the power or ability to conduct investigation round-the-clock (see para 25).
- (3) On the basis of this reading of s 30(3)(a), there was merit in the plaintiffs' application. The plaintiff had been unlawfully detained beyond office hours at the MACC headquarters on 15 and 16 July 2009 (see para 26).

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[Bahasa Malaysia summary]

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Pada 15 Julai 2009 pegawai-pegawai Suruhanjaya Pencegahan Rasuah Malaysia ('SPRM') membuat pemeriksaan di rumah plaintiff, yang menyebabkan plaintiff diminta hadir ke ibu pejabat SPRM Shah Alam untuk membantu dalam siasatan sebagai seorang saksi. Menurut plaintiff, dia diminta hadir di ibu pejabat tersebut pada pukul 8.45 malam dan disoal siasat oleh pegawai-pegawai SPRM dan hanya dilepaskan pada pukul 1.35 petang keesokan harinya. Defendan-defendan mendakwa bahawa plaintiff hanya disoal siasat dari pukul 9.45 malam hingga 2.53 pagi keesokan hari dan

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- A dibenarkan meninggalkan premis tersebut pada pukul 2.50 pagi. Defendan-defendan selanjutnya mendakwa bahawa plaintif memilih untuk terus berada di sana sehingga pagi 16 Julai 2009 untuk menunggu isterinya yang didakwa sepatutnya membawa beberapa dokumen yang relevan. Pengambilan keterangan disambung pada pukul 11.30 pagi 16 Julai 2009
- B sehingga pukul 1.30 petang. Plaintif tidak menyangkal dakwaan defendan-defendan. Plaintif di dalam guaman ini memohon, antara lain: (i) untuk satu deklarasi bahawa defendan-defendan, dalam menjalankan siasatan satu kesalahan di bawah s 30(1)(a) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 ('Akta'), di bawah undang-undang, hanya boleh merekodkan
- C keterangan plaintif sebagai seorang saksi pada waktu pejabat, iaitu dari 8.30 pagi hingga 5.30 petang setiap hari dan bukan melebihi masa tersebut; (ii) satu deklarasi bahawa defendan-defendan telah melanggar s 30(3)(a) Akta; dan (iii) ganti rugi. Isu di hadapan mahkamah adalah sama ada keterangan plaintif sebagai saksi boleh diambil di luar waktu pejabat biasa SPRM.
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Diputuskan, membenarkan permohonan plaintif dan memberikan ganti rugi untuk penahanan salah:

- E (1) Sebagai perkara prinsip, peruntukan statutori yang menjejaskan kebebasan asasi mesti dibaca secara umum berdasarkan peruntukan perlembagaan yang relevan. Tidak ada ruang untuk tafsiran harfiah, tetapi ruang lingkup yang lebih luas untuk pendekatan tafsiran yang berasaskan hak. Ia adalah perlu, oleh kerana ia tidak boleh dianggap
- F niat Parlimen untuk menggubal undang-undang yang mencabuli kebebasan peribadi. Dalam sesuatu sistem perlembagaan yang matang, jika terdapat kekaburan dalam undang-undang, kekaburan tersebut perlu diselesaikan memihak kepada kebebasan asasi, dan bukan sebaliknya (lihat perenggan 21).
- G (2) Frasa 'day-to-day' di dalam s 30(3)(a) Akta membangkitkan kekaburan. Mahkamah harus mentafsir frasa tersebut untuk mengelakkan keputusan yang tidak munasabah. Di dalam konteks s 30(3)(a) Akta, 'on a daily basis', adalah maksud yang sewajarnya diberikan untuk frasa tersebut. Ia tidak boleh bermaksud atau menyarankan kuasa atau
- H kebolehan untuk menjalankan siasatan 24 jam (lihat perenggan 25).
- I (3) Atas dasar tafsiran bagi s 30(3)(a) ini, terdapat merit di dalam permohonan plaintif. Plaintif telah ditahan dengan menyalahi undang-undang melebihi waktu pejabat di ibu pejabat SPRM pada 15 dan 16 Julai 2009 (lihat perenggan 26).]

Notes

For a case on interpretation and construction of fundamental liberties, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) para 2094.

For cases on construction of statutes generally, see 11 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1836–2049. A

For cases on Malaysian Anti-Corruption Commission Act 2009 generally, see 3 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1–3047.

Cases referred to

AE Beavis v Foo Chee Fong [1938] MLJ 129, HC (refd) B
Cape Brandy Syndicate v Inland Revenue Commissioners [1921] 1 KB 64 (not folld)

Dato Mokhtar bin Hashim & Anor v PP [1983] 2 MLJ 232, FC (refd) C
Duport Steels Ltd & Ors v Sirs & Ors [1980] 1 All ER 529 (refd)

King Emperor v Benoari Lai Sharma (1945) 72 IA 57, PC (refd)

Lee Kwan Woh v PP [2009] 5 MLJ 301 ; [2009] 5 CLJ 631, FC (refd)

Wong Pot Heng & Anor v Zainal Abidin Putih & Anor [1990] 2 MLJ 410, SC (refd)

Legislation referred to

Federal Constitution arts 5, 8

Interpretation Acts 1948 and 1967 s 17A

Malaysian Anti-Corruption Commission Act 2009 ss 10(1)(b), 30, 30(1), (1)(a), (3), (3)(a) E

Prison Act 1995

Rules of the High Court 1980 Forms 67, 68, 69

Karpal Singh (Sangeet Kaur with him) (Karpal Singh & Co) for the plaintiff. Noorin bt Badarudin (Lailawati bt Ali with her) (Federal Counsel, Attorney General's Chambers) for the defendants. F

Mohamad Ariff J:

INTRODUCTION

[1] On 15 July 2009 officers of the Malaysian Anti-Corruption Commission ('MACC') conducted a search at the home of the plaintiff, as a result of which the plaintiff was required to attend at the MACC Headquarters Shah Alam to assist in an investigation as a witness. He, according to the plaintiff, was required to attend at that headquarters at 8.45pm. Further, according to the plaintiff's version of the facts, as deposed to in his supporting affidavit, he was questioned thereafter by the officers of the Commission and only released at 1.35pm the following day. According to the plaintiff, he was not free to leave the premises of the MACC between 8.45pm on 15 July until his release on 16 July at 1.35pm. The plaintiff, in his supporting affidavit, states: G

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- A 8. I was detained bereft of any authority or legal power by the officers... I respectfully contend these officers were at all material times, acting on the instructions of the 2nd Defendant.
- B 9. I respectfully contend I could not be lawfully required to be questioned after government office hours i.e. between 8.30 a.m. and 5.00 p.m. each day as provided for in section 30(1)(a) of the said Act.
- C 10. As a result of the acts of the Defendants and their agents and/or servants, I have suffered loss and damage in that I was confined against my will at the premises of the MACC beyond the period allowed by law on 15th and 16th of July 2009. The acts of the Defendants amount to my having been held in unlawful confinement amounting to false imprisonment for which the Defendants are responsible entitling me to damages, including exemplary and aggravated damages.
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- E [2] There is some dispute as to the exact time when he was at the premises, and the reason why he came to be there. According to the version of the defendants, as can be seen in the affidavit in reply of Bulkini bin Hj Paharuddin, it is conceded that the search was conducted at the plaintiff's house on 15 July 2009 and he was taken to the Shah Alam office of MACC as a witness. The action taken by MACC arose from information received in connection with applications for state constituency funds that were submitted to the district offices, allegedly using false details for the purposes of carrying out activities in these constituencies, described as 'Kawasan ADUN Selangor'. One of the companies being investigated, according to this affidavit, was a company called Merit Link Enterprise. The relevant parts of the affidavit read as follows:
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- G i) Salah satu syarikat yang disiasat ialah Merit Link Enterprise yang dipercayai mempunyai kaitan dengan Plaintiff. Merit Link Enterprise dipercayai telah membekalkan bendera dan lain-lain alatan kepada program Mesra Rakyat yang dianjurkan oleh YB Ean Yong Hiah Wah, ADUN Seri Kembangan.
- H ii) Pada 15.7.2009, sepasukan anggota penguatkuasa Defendan Ketiga dianggotai oleh Penguasa Hadri bin Hashim, Penolong Penguasa Zulkifli bin Aziz dan saya telah pergi ke rumah Plaintiff untuk membuat pemeriksaan bagi mendapatkan dokumen-dokumen berkenaan dengan siasatan kami. Pihak kami hanya menemui Sijil Pendaftaran Perniagaan Merit Link dan cop perniagaan Merit Link Enterprise.
- I iii) Memandangkan Merit Link Enterprise didaftarkan di atas nama isteri Plaintiff iaitu Wong Siew Fong, kami meminta isteri Plaintiff yang ketika itu berada bersama-samanya untuk pergi ke pejabat Defendan Ketiga di

- Shah Alam bagi tujuan pemeriksaan lanjutan kerana mengesyaki bahawa tuntutan pembekalan Merit Link adalah palsu. A
- iv) Sebaliknya Plaintiff menawarkan diri untuk pergi ke pejabat Defendan Ketiga menggantikan tempat isterinya. Plaintiff pergi bersama-sama kami ke pejabat Defendan Ketiga di Shah Alam dengan kenderaan jabatan atas alasan tidak tahu bagaimana hendak ke pejabat tersebut. B
- v) Plaintiff berada di pejabat Defendan Ketiga untuk pemeriksaan pada 9.45 malam 15.7.09 hingga 2.53 pagi 16.7.2009. Selesai pemeriksaan saya memaklumkan Plaintiff bahawa beliau boleh pulang dan datang semula pada pagi keesokan harinya untuk pemeriksaan lanjut. C
- vi) Plaintiff sebaliknya memberitahu saya beliau ingin menunggu kedatangan isterinya pada pagi 16.7.2009 yang akan membawa dokumen-dokumen berkaitan bersamanya. D
- vii) Pada 16.7.2009, Defendan Kedua telah merakamkan percakapan Plaintiff pada 11.30 pagi. Selesai rakaman percakapan pada 1.35 tengahari, Plaintiff dibenarkan pulang. Walau bagaimanapun, Plaintiff diminta hadir untuk pemeriksaan lanjut pada 20.7.2009. Bagi tujuan tersebut Perintah bertarikh 16.7.2009 diserahkan kepada Plaintiff. E
- [3] From the defendants' version of the facts, it appears that the plaintiff was interrogated from 9.45pm until 2.53am the next day. He was allowed to leave the premises at 2:50am but chose to remain until the morning of 16 July 2009 to wait for his wife who allegedly would be bringing the relevant documents with her. It also appears that the statement taking continued at 11.30 in the morning on the same day. The statement taking lasted until 1.30pm. F
- [4] The plaintiff has not filed any further affidavit to contradict these statements in the affidavit in reply. Thus, there are two conflicting versions of the circumstances leading to the plaintiff's presence at the MACC's office. Whatever may be the exact circumstances, one fact is clear — the plaintiff was interrogated at night until the early hours of the morning. G H
- [5] This constitutes the issue before this court, namely whether it was permissible in law for the plaintiff to have his statement recorded *as a witness* outside of the MACC's normal office hours. The position of the plaintiff *as a witness* in the context of the MACC Act has to be stressed, since this is the specific, narrow issue before this court. This issue arises from an express statutory provision in the Malaysian Anti-Corruption Commission Act 2009 ('the MACC Act'), namely s 30(3)(a). It is necessary, however, to consider s 30 in full. I

- A** 30(1) An officer of the commission investigating an offence under this Act may:
- (a) order any person to attend before him for the purpose of being examined orally in relation to any matter which may, in his opinion, assist in the investigation into the offence;
- B** (b) order any person, to produce before him, within the time specified by such officer, any book, documents, records, accounts or computerised data, or any certified copy thereof, or any other article which may, in his opinion, assist in the investigation into the offence;
- C** (c) by written notice order any person to furnish a statement in writing made on oath or affirmation setting out therein all such information which may be required under the notice, being information which, in such officer's opinion, would be of assistance in the investigation into the offence, within the time specified by such officer; and
- D** (d) order any person to attend before them for the purpose of having his handwriting or voice sample taken.
- 30(3) A person to whom an order has been given under paragraph (1) (a) shall:
- E** (a) attend in accordance with the terms of the order to be examined, and shall continue to attend from *day-to-day* where so directed until the examination is completed; and
- (b) during such examination, disclose all information which is within his knowledge, or which is available to him, in respect of the matter in question to which he is being examined, and answer any questions put to him truthfully and to the best of his knowledge and belief, and shall not refuse to answer any question on the ground that it tends to incriminate him or his spouse. (Emphasis added.)
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- G** THE RELIEFS PRAYED FOR IN THE ORIGINATING SUMMONS

[6] It is against this factual matrix that the plaintiff has filed an originating summons against the defendants, jointly and separately, for the following relief:

- H** (a) a declaration that the defendants, in investigating an offence under s 30(1)(a) of the MACC Act (Act 694)... could lawfully only record a statement of the plaintiff as a witness during office hours, namely 8.30am to 5.30pm each day and not beyond these hours;
- I** (b) a declaration that the defendants have acted in contravention of the provisions of s 30(3)(a) of the said Act;
- (c) damages (including exemplary and aggravated damages) for false imprisonment;

- (d) interest on the adjudged sum on such rates and for such periods deem fit and proper by the honourable court; A
- (e) an enquiry by the senior assistant registrar, High Court, Kuala Lumpur to determine the damages the plaintiff is entitled to; ...

[7] As far as the parties are concerned, the plaintiff is suing Datuk Seri Ahmad Said, in his capacity as Ketua Suruhanjaya (as the first defendant); Mohamad Hassan bin Zulkifli, in his capacity as Penolong Penguasa (the second defendant), and of course the MACC itself (as the third defendant). B

MEANING OF 'DAY-TO-DAY' C

[8] The plaintiff takes a position that the law only allows a witness to be examined by the MACC during normal office hours. This conclusion is derived from what is regarded as the proper reading of the phrase 'day-to-day', as it appears in s 30(3)(a) of the MACC Act. Mr Karpal Singh, leading counsel for the plaintiff, argued as follows: D

What requires to be interpreted is what 'day-to-day' entails.

The phrase 'day-to-day' is not defined in the Interpretation Acts 1948 and 1967 nor the MACC Act. E

It is submitted a purposive approach ought to be applied in the interpretation of the provisions of section 30(3), in particular, to the phrase 'day-to-day'.

Parliament could not have intended 'day-to-day' to mean round-the-clock. That would be the literal approach which would lead to an absurdity and investigations of poor quality. F

[9] In support of his argument, Mr Karpal highlighted the old case of *AE Beavis v Foo Chee Fong* [1938] MLJ 129, where Terrell J referred to the term 'day' and said, 'I always understood that 'day' covers the normal sittings of the court, ie from 10.30am or 11am to 4pm'. G

[10] By way of analogy, counsel also referred to forms 67, 68 and 69 of the Rules of the High Court 1980 in relation to writs of subpoena, where the phrase from 'day-to-day until the end of the proceedings' appears. In this connection too, the phrase can only mean during normal sittings of the court. H

[11] Section 10(1)(b) of the MACC Act was also referred to, and it was argued that by virtue of this provision, the Lock-up Rules (LN 328/1958) made under s 8(3) of the Prisons Ordinance 1952, apply to the MACC as well. Such conclusion is arrived at because s 10(1)(b) of the MACC Act provides that a junior officer of the Commission shall have for the purposes I

- A of the act ‘all the powers and immunities of a prison officer of the rank of sergeant and below under the Prison Act 1995 when escorting and guarding persons in custody of the Commission and those of a Police Officer of the rank of Sergeant and below appointed under the Police Act 1967’.
- B [12] It is illustrative that r 20 of the Lock-Up Rules states:
- Banduan-banduan akan dikurung pada waktu malam pada pukul 6.30 petang dan akan bangun siap berpakaian pada pukul 6.30 pagi.
- C [13] It would thus appear that even suspects cannot be subject to interrogation during these early hours. It has been laid down clearly in the celebrated case of *Dato Mokhtar bin Hashim & Anor v Public Prosecutor* [1983] 2 MLJ 232 that the statement recorded after a prolonged period of
- D interrogation at extremely odd hours ranging into the early hours of the morning and therefore in breach of the Lock-Up Rules, could not be regarded as voluntary and therefore inadmissible. It is in *Dato Mokhtar Hashim* that one locates the firm and eloquent statement of the late Abdoolcader FJ, which bears repeating given its relevancy here:
- E As to the long hours and odd hours of interrogation stated in the station diaries this would appear to be suggestive of operation within the meaning of Sachs J in *R v Priestly* which was adopted in *R v Praeger*. We are told by the public prosecutor that this might be the method adopted by the special branch, but if we are to
- F approbate and endorse the whims and fancies of interrogators in the systems they choose to utilise, we might as well countenance and interrogator’s preference to stand a man on his head or hang him by his toenails whilst questioning him so as the better to enhance the flow of blood to his cerebral cavity and stimulate his
- G neotic faculties and recollection of past and recent events. We need hardly remind those involved in the interrogation of witnesses and accused persons that any methods adopted in the process outside accepted norms and standards must be able to withstand the test of strict curial scrutiny (at p 273 of the Report).
- H [14] Whilst the plaintiff submits in favour of a purposive reading of s 30(3)(a), which would be in line with s 17A of the Interpretation Acts 1948 and 1967, federal counsel acting for the defendants, Puan Noorin bt Badarudin, urged this court not to limit the phrase ‘day-to-day’ to normal office hours, since to do so would lead to an absurdity. If the legislative purpose was enquired into, ‘day-to-day’ cannot be limited to normal office hours. This argument is premised on the basis that so to do will impede or
- I stifle investigation.

[15] For completeness, I cite s 17A of the Interpretation Acts.

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In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

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[16] In the course of submission I had prompted counsels on the relevance of arts 5 and 8 of the Federal Constitution. Puan Noorin conceded art 5 of the Constitution would apply but a balance must be struck between the interests of the state and the rights of the individual.

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[17] Puan Noorin urged this court to apply the principles of interpretation as laid down in numerous cases, including *Duport Steels Ltd & Ors v Sirs & Ors* [1980] 1 All ER 529 where the following passage of Lord Scarman appears:

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... in the field of statute law the judge must be obedient to the will of Parliament as expressed in its enactments. In this field Parliament makes and unmakes the law. The judge's duty is to interpret and to apply the law, not to change it to meet the judge's idea of what justice requires. Interpretation does, of course, imply in the interpreter a power of choice where differing constructions are possible. But our law requires the judge to choose the construction which in his judgement best meets the legislative purpose of the enactment. If the result be unjust but inevitable, the judge may say so and invite Parliament to reconsider its provision. But he must not deny the statute. Unpalatable statute law may not be disregarded or rejected, merely because it is unpalatable. Only if a just result can be achieved without violating the legislative purpose of the statute may the judge select the construction which best suits his idea of what justice requires... (at p 551 of the Report).

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[18] I was also invited to consider the approach adopted by the Supreme Court in *Wong Pot Heng & Anor v Zainal Abidin Putih & Anor* [1990] 2 MLJ 410, where the court approved the statement in *Cape Brandy Syndicate v Inland Revenue Commissioners* [1921] 1 KB 64 to the effect that one 'cannot add words in the statute or read words into it which are not there', and 'nothing is to be read, nothing is to be implied, one can only look fairly at the language used'.

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[19] If I understand this argument correctly, it amounts to an invitation to this court to adopt a literal approach to statutory interpretation. Mr Karpal Singh was quick to reply that such an interpretation would lead to an absurd result when interpreting s 30(3)(a) of the MACC Act.

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A [20] I might add at this juncture, even the passage from *Duport Steels Ltd v Sirs and others* allows the judge to achieve a just result if it can be done without violating the legislative purpose of the statute, in which event he can 'select the construction which best suits his idea of what justice requires'.

B THE COURT'S INTERPRETIVE FUNCTION

C [21] The subject matter in this application concerns liberty of the person. It would be unwise to relegate the subject matter and treat the court's interpretive function as if this court were looking at an ordinary commercial case, much worse, a revenue matter as was the case in *Cape Brandy Syndicate*. The approach adopted in cases such as *Cape Brandy Syndicate* will not be appropriate when a statutory provision touching and concerning fundamental liberties is required to be interpreted. As a matter of principle, D a statutory provision affecting fundamental liberties must be read broadly in the light of the relevant constitutional provisions. There is less room for literalism, but greater scope for a rights-oriented approach to interpretation. This has to be, since it cannot be the presumed intention of Parliament to enact a law that violates personal liberties. In any mature constitutional E system, if there is any ambiguity in the law, that ambiguity should be resolved in support of fundamental liberties, rather than the contrary. If this court were to agree to the submission urging it to adopt a literal approach, it will mean sliding back to an era long past, as exemplified, for instance, in the Privy Council opinion in *King Emperor v Benoari Lai Sharma* (1945) 72 IA F 57 where it was said:

The question whether the Ordinance is intra vires or ultra vires does not depend on considerations of jurisprudence or policy. It depends simply on examining the language of the Government of India Act.

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H [22] Most recently, the Federal Court of Malaysia has reiterated the correct approach and has stated in unequivocal terms that 'art 5(1) strikes down... all forms of state action that deprive either life or personal liberty *bearing a meaning of the widest amplitude*' (Emphasis added.): *Lee Kwan Woh v Public Prosecutor* [2009] 5 MLJ 301 at p 314; [2009] 5 CLJ 631 at p 643. The Federal Court further said:

I Drawing the threads together, it is clear from the authorities that it is a fundamental right guaranteed by art 5(1) that a person's life (*in its widest sense*) or his or her personal liberty (*in its widest sense*) may not be deprived *save in accordance with state action that is fair both in point of procedure and substance*. Whether an impugned state action is substantively or procedurally fair must depend on the fact pattern of each case (at p 315 (MLJ); 645 (CLJ)). (Emphasis added.)

[23] The 'fact pattern' in this present application is this: the plaintiff was detained for interrogation against his will at night until the early hours of the morning (the 'state action') on the basis of s 30 of the MACC Act, such as to affect his personal liberty under art 5.

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[24] Applied to the facts of this case, this court is being asked to look into an aspect of 'State Action' in relation to procedure during a process of investigation. Taking the cue from *Lee Kwan Woh*, the personal liberty of the plaintiff has to be seen 'in its widest sense'. In this 'fact pattern', can s 30 of the MACC Act be legitimately construed as allowing this intrusion into personal liberty?

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FINDINGS

[25] It is fair to conclude on the arguments presented before this court that the phrase 'day-to-day' raises an ambiguity. This court has to interpret that phrase so as to avoid an absurd result. The phrase admittedly is not defined anywhere in the MACC Act; such being the case, it is then permissible to explore the dictionary meaning of that phrase, which after all is a phrase of common currency. The 'legal' meaning cannot be far removed from its ordinary meaning. The Oxford Dictionary of English (2nd Ed) defines the adverb 'day-to-day' as 'on a daily basis'. In the context of s 30(3)(a) of the MACC Act, this, with respect, is the proper meaning to be ascribed to that phrase. It cannot mean or connote the power or ability to conduct investigation round-the-clock. This is also the meaning to be ascribed to the forms of subpoena and their mention of 'day-to-day until the end of the proceedings'. Since that phrase cannot mean an unending 24 hour day, 'day' must relate to normal working hours. In my opinion, this has to be the proper legislative purpose. Had Parliament intended otherwise, the phraseology would be different. I am fortified in my view by looking at the overall context of s 30. Subsection 3 refers to a person 'to whom an order has been given under paragraph (1)(a)'. Paragraph (1)(a) states that an officer of the Commission investigating an offence under the Act may order any person to attend before him for the purpose of to be examined orally in relation to any matter which may, in his opinion, assist in the investigation into the offence. Where such an order has been made, such person shall attend 'in accordance with the terms of the order' to be examined, and shall continue to attend from day-to-day 'where so directed' until the examination is completed. The statutory requirements therefore postulates a proper order being made with terms, and such person shall attend in accordance with the terms of the order, and if so directed, shall attend from day-to-day. On the facts of this case, I do not find evidence of any such order with terms requiring the plaintiff to attend round-the-clock for purposes of investigation. It will offend the MACC Act if it did. Indeed, the evidence is

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A to the contrary. The order, which appears as exh TBW 1 in the supporting affidavit of the plaintiff, (perintah menghadiri pemeriksaan) does not require his attendance for a round-the-clock attendance as a witness. Very properly, this order dated 16 July 2009 required the plaintiff to attend for examination on 20 July 2009 at 10am, namely within office hours. This order conforms with the statutory purpose underlying the MACC Act, and there is no additional requirement for the plaintiff to attend on a day-to-day basis until completion of investigation.

C [26] On the basis of this reading of s 30(3)(a), I therefore find that there is merit in the plaintiff's application, and agree with the plaintiff's contention that he had been unlawfully detained beyond office hours at the MACC Headquarters on 15 and 16 July 2009.

D [27] I might add here that if this court construes the phrase 'day to day' as permitting round-the-clock interrogation, it will mean adding words into the statute which are simply not there. It will be the function of Parliament to supply the omission and define the exact parameters of permissible interrogation in the context of the MACC Act and the Federal Constitution, if necessary.

CONCLUSION

F [28] In the premises, I allow the plaintiff's application by way of originating summons in terms of paras 1 and 2 of encl 1. As indicated earlier there is a factual dispute on the actual hours when he was present at the MACC Headquarters, and on the allegation that he voluntarily chose not to leave when allowed to do so at 2.53am, preferring, it seems, to wait for his wife. However, Mr Karpal has agreed to limit the plaintiff's claim to the period stipulated by the defendants, namely from 9.45pm on 15 July 2009 to 2.53am on 16 July 2009. The plaintiff has also agreed to abandon the claim for exemplary and aggravated damages, and to proceed only on the basis of general damages for false imprisonment. In these circumstances, I therefore also allow prayers 3, 4, 5 and 6, with prayer 3 to read:

H Damages for false imprisonment for the period from 9.45 p.m. on 15.7.2009 to 2.53 a.m. on 16.7.2009.

I [29] Taxed costs of this application to be paid by the defendants to the

plaintiff.

A

ORDER

[30] Enclosure 1 allowed in terms of prayers 1, 2, 3 (as amended), 4, 5 and 6. Costs to be taxed to be paid by the defendants to the plaintiff.

B

Plaintiffs' application allowed and damages for false imprisonment granted.

Reported by Kanesh Sundrum

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